



# COUNTY OF SAN DIEGO

## LAND USE AGENDA ITEM

### BOARD OF SUPERVISORS

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First District

JOEL ANDERSON  
Second District

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Third District

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Fourth District

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**DATE:** March 3, 2021

**11**

**TO:** Board of Supervisors

### **SUBJECT**

**UPDATE: MEASURES TO PROVIDE ECONOMIC ACCESS AND EQUITY IN THE CANNABIS INDUSTRY (DISTRICTS: ALL)**

### **OVERVIEW**

On January 27, 2021 (4), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) to develop a Zoning Ordinance amendment that allows for a variety of cannabis uses. The Board also directed staff to develop a Social Equity Program that will include numerous elements to prioritize equity, access, and business opportunities to help rectify the injustices caused by the War on Drugs and be in place prior to issuance of the first permit.

Additionally, the Board directed staff to conduct robust stakeholder outreach in developing the cannabis program, including engagement with Community Planning and Sponsor Groups (CPG/CSG), social and racial justice advocates, farmers, and potential cannabis permit holders. The outreach is to guide development of the program's components, including social equity, onsite consumption, and permitting. The Board requested that all program components be developed concurrently to create a comprehensive Socially Equitable Cannabis Permitting Program (Program), with an initial report back in 90 days and return with final ordinances and policies within 180 days.

The purpose of this update is to provide information to the Board based on staff research, analysis of other jurisdictions' program development, and stakeholder input to date, and for the Board to provide direction on how the Program is built. Based on preliminary stakeholder discussions, there is a strong desire for the County to extend the project timeline beyond 180 days to provide sufficient time for outreach and ordinance development. Stakeholders noted the value of a longer and more comprehensive approach. This would afford staff additional time to develop an improved Social Equity Program, which stakeholders suggest requires more than 180 days to conduct properly.

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**RECOMMENDATION(S)**

**CHIEF ADMINISTRATIVE OFFICER**

Department of Planning & Development Services recommends that the Board of Supervisors:

1. Find in accordance with Section 15061(b)(3) that today's actions are exempt from CEQA pursuant to the common sense exemption since it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment.
2. Direct the Office of Equity and Racial Justice to lead the development of the framework and strategy, including grant funding options, needed to launch a comprehensive Social Equity Program and coordinate this with the land use permitting system being developed by the Department of Planning & Development Services.
3. Direct staff to return to the Board in 180 days with an update on stakeholder input, ordinance development, and Social Equity Program options for Board direction.
4. Direct staff to prepare a Programmatic Environmental Impact Report (PEIR), which will allow for additional stakeholder engagement and potentially reduce the cost and time associated with permitting for future applicants, making the permitting process more equitable.
5. Establish appropriations of \$675,000 in the Department of Planning & Development Services for the preparation of the PEIR based on prior year available General Fund fund balance. **(4 VOTES)**

**FISCAL IMPACT**

Funds for this request are partially included in the Fiscal Year 2020-21 Operational Plan in the Department of Planning & Development Services (PDS) for \$485,000 for consultant services and in the San Diego County Sheriff's Office and/or Code Compliance for \$500,000 for immediate and aggressive enforcement of unlicensed, illegal dispensaries, labs, or any related operating facilities and were appropriated by the Board on January 27, 2021 (4). If approved, this request will result in additional costs of \$675,000 in Fiscal Year 2020-21 to complete the Programmatic Environmental Impact Report for a total project cost of \$1,160,000 and will take up to two years to complete. The funding source is prior year available General Fund fund balance. There will be no additional staff years.

**BUSINESS IMPACT STATEMENT**

N/A

**BACKGROUND**

On January 27, 2021 (4), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) to develop a Zoning Ordinance amendment that allows for a variety of cannabis uses. The Board also directed staff to develop a new Cannabis Permitting System that will include numerous elements to prioritize social equity, access, and business opportunities to help rectify the injustices caused by the War on Drugs and be in place prior to issuance of the first permit.

Additionally, the Board directed staff to conduct robust stakeholder outreach in developing the cannabis program, including engagement with Community Planning and Sponsor Groups (CPG/CSG), social and racial justice advocates, farmers, and potential cannabis permit holders.

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The outreach is to guide development of the program's components, including social equity, onsite consumption, and permitting. The Board requested that all program components be developed concurrently to create a comprehensive Socially Equitable Cannabis Permitting Program (Program), with an initial report back in 90 days and return with final ordinances and policies within 180 days.

***California Environmental Quality Act (CEQA)***

The changes to the County of San Diego (County) Zoning Ordinance that are needed to implement Board direction are considered a "project" under the California Environmental Quality Act (CEQA), and therefore must comply with CEQA regulations. Staff determined the best way to comply with CEQA and meet the 180-day requirement is to utilize a statutory exemption. Business and Professions Code (BPC) section 26055(h) provides that CEQA does not apply to the adoption of an ordinance by a local jurisdiction provided that the ordinance requires discretionary review and approval to engage in commercial cannabis activity (the "26055 Exemption"). It is important to note that the 26055 Exemption expires on July 1, 2021. This effectively reduces the project duration by a month, from 180 days to 150 days, and is the main driver of the project's current timeline. To extend the project duration, as staff recommends, would foreclose the County's opportunity to utilize this exemption. However, there is a Senate Bill, SB-59, currently under consideration that would extend the statute's expiration to 2028. If SB-59 passes, the County could continue to utilize the 26055 Exemption and extend the project's timeline to provide sufficient time for outreach and ordinance development.

However, there are drawbacks to the 26055 Exemption, and staff does not recommend this approach. As alluded to above, using it does not exempt applicants for cannabis business permits from CEQA review. They will have to undergo a discretionary review process, which entails obtaining a discretionary permit and completing a CEQA review at the time of permitting. Each application's discretionary review process would include multiple environmental technical studies, such as Aesthetics, Traffic, and Hydrology. These studies would likely result in a CEQA analysis at the level of an Environmental Impact Report or a Mitigated Negative Declaration (MND). The cost to the applicant to cover County permitting fees would likely be \$70,000 to \$90,000 per project, in addition to the applicant's private consultant costs. In addition to technical studies, each application would require a public review period and a response to comments period, leading to a total permitting time of 18 months. Therefore, relying on the CEQA exemption to achieve the 180-day timeline leads to an expensive process that will favor affluent applicants and reduce the County's ability to provide an equitable process.

An alternative to relying on the 26055 Exemption for CEQA compliance is for the County to conduct a Programmatic Environmental Impact Report (PEIR), which would cost an additional \$675,000 and take approximately two years. Though this is a longer and more expensive process for the County to undertake, it has benefits. First, there would be more time for stakeholder engagement for the PEIR, which would reduce the likelihood of challenges and lawsuits for individual projects. Second, permits would be less expensive and less time consuming for applicants. Though project specific technical studies on some environmental impacts, such as traffic, may still be required for the subsequent discretionary permits for commercial cannabis applicants, other environmental impacts, such as noise and odor, may be covered by the PEIR's technical studies. This would lead to less study for individual applicants and likely result in a less

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costly CEQA document (e.g., Negative Declaration, Mitigated Negative Declaration, or Exemption). A PEIR adopted by the County could be challenged for compliance with CEQA, but the County would bear the sole cost and responsibility to defend such legal challenges. Though this increases the County's risk of litigation, it reduces individual applicant risk, making the process more equitable. In sum, relying on a PEIR would allow for additional stakeholder engagement and potentially reduce the cost and time associated with permitting for future applicants, making the permitting process more equitable.

***Stakeholder Input***

Stakeholders have noted a strong preference to extend the timeline of the project to include more stakeholder engagement in establishing the Social Equity Program. Social equity groups, including San Diego Cannabis Social Equity Coalition and Community Advocates for Just and Moral Governance, commented that completing this project within 180 days using the 26055 Exemption would not result in a quality program. These groups stressed the value and need to prioritize the development of the Social Equity Program, beginning with a needs-assessment prior to identifying who and what the focus of the program should be. This linear approach is not feasible given the current direction to return to the Board with ordinances in 180 days. Additionally, requirements for discretionary approvals can also inhibit social equity as they require additional resources to obtain, are subject to a variety of appeals, and can take longer to process.

A meeting with Community Planning and Sponsor Group (CPG/CSG) Chairs was held on February 11, 2021. Many of the participants expressed a desire to allow CPG/CSGs to have control over the location of future commercial cannabis businesses. They also expressed concern over the Social Equity Program, suggesting that people with prior convictions should not receive preferential treatment. Participants felt that the windy roads, which are pervasive in the unincorporated areas, and the lack of rideshare programs make onsite consumption a dangerous proposition. Participants also expressed a desire to slow the process down to allow CPG/CSGs sufficient time to consider the Program's implications and provide meaningful comments to the Planning Commission and Board. Lastly, the participants felt that the cannabis industry increases the likelihood of violent crime.

County staff has also engaged with the San Diego County Farm Bureau's Cannabis Subcommittee and existing San Diego County dispensary operators. The farmers would like to include manufacturing in agricultural lands to avoid long transportation times moving crops from farm fields to manufacturing sites. Additionally, they would also like the Social Equity Program to include veterans and want the ability to grow outdoors. The existing San Diego County dispensary operators expressed their desire to have the Zoning Ordinance section 6935's April 2022 ban lifted, as well as the removal of any regulations that require their businesses to operate in specific locations, and the opportunity to relocate based on future zoning rules. Lastly, they would like additional information on the Social Equity Program before providing input. Both groups suggested careful consideration of setbacks to ensure that regulations do not unintentionally force cannabis operators into small, dense pockets within the unincorporated area.

***Best Practice Research***

County staff reached out to six California cities and eleven counties to gain insight into their experiences developing commercial cannabis and social equity programs. One staff member

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cautioned the use of the 26055 Exemption, suggesting that applications are more likely to be litigated and the permit process will be expensive. Another county that used the 26055 Exemption stated that most projects do not make it to approval because the environmental review process and public opposition make permits too expensive, and applicants withdraw. Several jurisdictions that relied on the 26055 Exemption suggested that a PEIR approach would have been better, one emphasizing the importance of a deliberate and methodical process that involves robust stakeholder engagement. Staff spoke with representatives of one jurisdiction that claimed the 26055 Exemption was sufficient for their purposes. However, that city does not allow outdoor cultivation and most of the applications received were for urban businesses in existing retail facilities.

***Conclusion***

Based on discussions with stakeholders and fellow jurisdictions, staff recommends extending the project up to two years with the preparation of a PEIR. This approach will reduce permitting barriers inherent in a program developed in 180 days, namely requiring extensive environmental investigation and discretionary permitting for all applications. By conducting a PEIR, the County would cover much of the environmental and community impact analysis upfront rather than requiring individual project applicants to take on this task alone. Though the PEIR would cost an additional \$675,000 and up to two years, it would result in a more accessible and socially equitable cannabis program.

**ENVIRONMENTAL STATEMENT**

Accepting the presentation related to this update and obtaining direction from the Board of Supervisors (Board) is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines as it would have no potential for resulting in a physical change to the environment, directly or indirectly. Accepting these items will not commit the County to any definitive course of action and would have no potential for resulting in significant physical change or effect on the environment, directly or indirectly. Subsequent actions would be reviewed pursuant to CEQA and presented to the Board for consideration before implementation. Therefore, it can be seen with certainty that there is no possibility that today's action may have a significant effect on the environment and that the actions are exempt or not subject to CEQA.

**LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN**

Today's actions support the County of San Diego's (County) 2021-2026 Strategic Plan of Building Better Health, Living Safely, Operational Excellence, and Sustainable Environments/Thriving by providing social equity for individuals and neighborhoods impacted by the War on Drugs in the Unincorporated County. These measures promote the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Today's actions also support the Strategic Plan by addressing safety considerations in the planning and decision-making process through establishing policies that will minimize the risk of personal injury, loss of life, property damage, and environmental damage associated with natural and human-made hazards, and threading with County, and regional partners to capture the diverse needs of the residents in the region.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah Aghassi". The signature is fluid and cursive, with a large initial "S" and a stylized "A".

SARAH E. AGHASSI  
Deputy Chief Administrative Officer

**ATTACHMENT(S)**  
N/A

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**AGENDA ITEM INFORMATION SHEET**

**REQUIRES FOUR VOTES:**      ☒ Yes    ☐ No

**WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED**

☐ Yes    ☒ No

**PREVIOUS RELEVANT BOARD ACTIONS:**

January 27, 2021 (4), Measures to Provide Economic Access and Equity in The Cannabis Industry (Districts: All)

**BOARD POLICIES APPLICABLE:**

N/A

**BOARD POLICY STATEMENTS:**

N/A

**MANDATORY COMPLIANCE:**

N/A

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):**

N/A

**ORIGINATING DEPARTMENT:** Planning & Development Services

**OTHER CONCURRENCE(S):**    Department of Agriculture, Weights, and Measures  
Finance and General Government Group  
Office of Equity, Diversity, and Inclusion  
Department of Environmental Health and Quality  
Department of Parks and Recreation  
Health and Human Services Agency  
San Diego County Sheriff's Department

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